

REMARKS

Claims 1-6, 9-14, 16 and 17 are pending in this application, with claims 16 and 17 being withdrawn. By this Amendment, claims 1-5 and 9-12 are amended, and claims 7, 8 and 15 are canceled. No new matter is added. In view of at least the following Remarks, reconsideration and allowance are respectfully requested.

Claims 1-5, 7, 8 and 10-15 are rejected under 35 U.S.C. §102(a) as being anticipated by U.S. Patent Application Publication No. 2004/0191577 (Suwa); and claims 6 and 9 are rejected under 35 U.S.C. §103(a) as being unpatentable over Suwa in view of U.S. Patent No. 6,884,630 (Gupta). These rejections are respectfully traversed.

The rejection under §102(a) over Suwa is improper because Suwa has a publication date of September 30, 2004 which is after the effective filing date of the pending application. The effective filing date of the pending application is the filing date of its corresponding PCT application, July 28, 2004. See 35 U.S.C. §363. Accordingly, withdrawal of the §102(a) rejections are respectfully requested.

Additionally, Suwa fails to disclose or suggest at least "a resist layer removal step of removing the resist layer on the second mask layer completely and processing the first mask layer in the pattern based on the second mask layer," and "a continuous recording layer processing step of processing the continuous recording layer in the pattern by dry etching based on the first mask layer to divide the continuous recording layer into a number of divided recording elements" where "the resist layer removal step is performed before the continuous recording layer processing step," as recited in claim 1.

The Office Action asserts that Suwa discloses resist layer 36, second mask layer 34 and first mask layer 24A. See Office Action at pages 3 and 5. The Office Action further asserts that Suwa teaches removing the alleged resist layer 36 before the continuous recording process step (paragraph 0074). See Office Action at page 3.

However, in paragraph 0074 Suwa discloses that, during etching of layer 34, a small amount of the layer 36 (alleged to be the resist layer) remains on layer 34. See Suwa at Fig. 5. During processing of recording layer 32, Suwa discloses that layer 36 (alleged to be the resist layer) in the region other than the concave parts is completely removed, while the first mask layer 34 in the region other than the concave parts is left in a small amount on each of the divided recording elements 20. See Suwa at Fig. 6, paragraph [0075].

Accordingly, Suwa teaches that the alleged resist layer 36 is not completely removed until the continuous recording layer is processed, because the resist layer remains on the convex parts until the continuous recording layer is processed. Furthermore, the alleged first mask layer 24A is processed before the resist layer 36 is completely removed. In contrast, claim 1 requires that the resist layer is removed completely and the first mask layer is patterned in the resist layer removal step, where the resist layer removal step is performed before the continuous recording layer processing step. That is, claim 1 requires (a) that the resist layer is completely removed prior to the continuous recording layer processing step, and (b) that the removal of the resist layer and the processing of the first mask layer occur in the same step. Thus, for the above reasons, Suwa fails to disclose both these features of claim 1.

Additionally, on page 5, the Office Action alleges that layer 24A is the first mask layer. However, claim 1 requires that the second mask layer is processed based on the resist layer, and the first mask layer is processed based on the second mask layer. Intermediate layer 24A is processed based on the resist layer 36 at the same time as mask layer 34, but is not processed based on mask layer 34. See Suwa at paragraph [0074]. Furthermore, intermediate layer 24A is present in the final product as shown in Fig. 1. Accordingly, intermediate layer 24A is not a mask layer within the meaning of claim 1. Suwa therefore fails to suggest processing one mask layer based on the other mask layer, as required in claim 1.

Similarly, in this regard, claim 1 requires that two mask layers and a resist layer are formed over the continuous recording layer. Because layer 24A is not a mask layer, Suwa also fails to disclose or suggest this feature of claim 1.

Guptha is cited for its alleged disclosure of removing DLC. See Office Action at page 5. Guptha fails to cure the deficiencies of Suwa. Thus, for all of the above reasons, claim 1 is patentable over the applied references.

Claims 2-6 and 9-14 depend from claim 1, and are therefore also patentable over the applied references for at least the reasons enumerated above as well as for the additional features they recite.

Claims 16 and 17 are withdrawn from consideration. Claims 16 and 17 also depend from claim 1. Accordingly, Applicants respectfully request rejoinder of claims 16 and 17 upon the allowance of claim 1. See MPEP §821.04(a).

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-6 and 9-14, and rejoinder and allowance of claims 16 and 17 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,


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